STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
STATE HISTORIC PRESERVATION REVIEW BOARD

In the Matter of:

STEPHEN M. SENESI,
Applicant/Appellant,

v Docket No. 96-510-HP

KALAMAZOO HISTORIC DISTRICT COMMISSION,
Respondent/Appellee.
_____/

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Detroit Historic District Commission denying an application seeking retroactive approval for installation of a through-the-wall air conditioner at the second floor level of a building located at 403 Park Place, Kalamazoo, Michigan.

The State Historic Preservation Review Board (the Board) has appellate jurisdiction to consider such appeals under section 5(2) of the Michigan Local Historic Districts Act, as amended, being section 399.205 of the Michigan Compiled Laws.

At the direction of the Board, an administrative hearing was held on October 30, 1996, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on January 17, 1997, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of Michigan Compiled Laws.

The Board fully considered the appeal, along with the Proposal for Decision and all materials and any exceptions submitted by the parties, at its regularly scheduled meeting

conducted on Friday, February 7, 1997.

Having considered the Proposal for Decision and the official hearing record made in this matter, the Board voted 6 to 0, with 2 abstention(s), to ratify, adopt, and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document; and,

Having done so,

IT IS ORDERED that the appeal be and the same is hereby denied.

IT IS FURTHER ORDERED that a copy of this Final Decision and Order shall be transmitted to all parties as soon as practicable.

Dated: 7 FEB 1997

David Evans, President
State Historic Preservation Review Board

Note: Section 5(2) of the Local Historic Districts Act provides that a permit applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date of the mailing of notice of the Final Decision and Order of the Board. MCR 7.105 and 2.105(G) may prescribe other applicable rules with respect to appeals from administrative agencies in contested cases.

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STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF STATE

HEARINGS DIVISION

In the Matter of:

STEPHEN M. SENESI,
Applicant/Appellant,

v Docket No. 96-510-HP

KALAMAZOO HISTORIC DISTRICT COMMISSION,
Appellee.
_____/

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Kalamazoo Historic District Commission (the Commission) denying a request for retroactive approval to install a through-the-wall air conditioner at the second story level of a two-unit residence located at 403 Park Place, Kalamazoo, Michigan. The property is situated in Kalamazoo's Vine Area Historic District (the District).

The appeal was filed under section 5(2) of the Local Historic Districts Act (the Act).[1] This section provides that a person who is aggrieved by a decision of an historic district commission may appeal the decision to the State Historic Preservation Review Board (the Review Board), which is an agency of the Michigan Department of State.

Upon receipt of the appeal, the Review Board directed the Michigan Department of State, Hearings Division, to convene an

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[1] 1970 PA 169, § 5, as amended by 1992 PA 96; MCL 399.205; MSA 5.3407(5).

administrative hearing for the purpose of taking relevant evidence and argument. The Hearings Division conducted a hearing on October 30, 1996, in Hearing Room No. 121, the Mutual Building, 208 N. Capitol Avenue, Lansing, Michigan. The hearing was held pursuant to the procedures prescribed in Chapter 4 of the Administrative Procedures Act.[2]

Stephen M. Senesi, the Appellant/property owner, appeared in person at the hearing, but was not represented by legal counsel. Robbert McKay, Historic Preservation Coordinator, City of Kalamazoo, attended the hearing as a representative of the Commission/Appellee. Nicholas L. Bozen, Administrative Law Examiner, Michigan Department of State, Hearings Division, presided at the hearing. Jane Busch, Certified Local Government Coordinator for the Michigan Department of State, State Historic Preservation Office, attended as an observer/representative on behalf of the Review Board.

Issues on Appeal

The Appellant appealed the Commission's decision, which was rendered on April 17, 1996, by means of correspondence dated July 8, 1996. The Appellant based his appeal on three grounds, which he outlined in a memo attached to his correspondence. The Appellant's grounds for appeal were as follows: 1) that when he initially obtained his renovation permit, he was verbally apprised of certain historic district rules but never received any written materials

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[2] 1969 PA 306, § 71 et seq; MCL 24.271 et seq; MSA 3.560(171) et seq.

warning that there might be a problem with a through-the-wall air conditioning unit; 2) that an in-wall air conditioning unit is tighter and less drafty than a window unit; and 3) that a Commission staff member had suggested in writing, in May of 1995, that an in-wall unit might be permissible if installed on the opposite side of Senesi's building.

During the administrative hearing, the Appellant reiterated and emphasized his primary difficulty with the Commission's decision. He stated that the basic reason for his appeal was poor process; that is, that no historic preservation official had ever given him anything in writing, to inform him about the requirements of historic preservation or to alert or warn him about any potential problems with his renovation project, prior to the time he installed his air conditioner. He added that the air conditioner was in place for over a year before anyone from the city had any problem with it.

The Appellant also reiterated his prior assertion that the in-wall air conditioner was more energy efficient than a window unit, and would provide more comfort for the apartment's occupants than would a window air conditioner.

The Appellant further stated that not all decisions should be based on historical factors and that some consideration should be accorded to tenants and owner/occupiers.

By way of response, the Commission's representative offered opening remarks to the effect that the Commission took its responsibilities under the Local Historic Districts Act and Chapter

16 of the Kalamazoo Code of Ordinances very seriously. McKay stated that, in accordance with section 16-22(a)(1) of the City Code, the Commission considers proposed projects in light of both locally developed historical standards and guidelines, as well as the Secretary of the Interior's Standards for Rehabilitation. He added that the Commission also relies on the Preservation Brief series published by the National Park Service, Preservation Assistance Division, for guidance in determining compliance with the Secretary of the Interior's Standards. McKay asserted that all three of those sources make clear that the mechanical equipment installation technique which was used at 403 Park Place was inappropriate.

He also indicated that in reviewing this matter with other city staff members and the commissioners, it appeared that no installation of a through-wall air conditioner had ever been approved, and in one instance there was vivid recollection of a denial of a similar application.

He further stated that for the Commission to approve an installation of this air conditioner on the basis of pre-existence without approval could well subject the Commission to charges of unequal protection of law or arbitrary and capricious action.

He concluded by saying that while the Commission appreciates the effort that would now have to be forthcoming in order to correct the situation, the Commission's position was that the removal of the air conditioner would be the only prudent way to

resolve this case. He added that the installation of a window unit would be acceptable.

Summary of Evidence

Under Michigan law, a party who occupies the position of plaintiff, applicant, or appellant generally has the burden of proof in an administrative proceeding. 8 Callaghan's Michigan Pleading and Practice (2d ed), § 60.48, p 176, Lafayette Market and Sales Co v City of Detroit, 43 Mich App 129, 133; 203 NW2d 745 (1972), Prechel v Dep't of Social Services, 186 Mich App 547, 549; 465 NW2d 337 (1990). The Appellant clearly occupies that position in this matter and consequently bears the burden of proof.

Section 5(2) of the Local Historic Districts Act, supra, indicates that appellants may submit all or any part of their evidence and arguments in written form. In that vein, the Appellant submitted five separate exhibits. His first exhibit (Appellant's Exhibit No. 1) consisted of Appellant's claim of appeal, to which he appended a Notice of Denial issued on April 17, 1996, a memo outlining three grounds in support of his request for retroactive approval, and a copy of the deed for 403 Park Place. The Appellant's second exhibit contained correspondence which was addressed to the Review Board and was dated September 11, 1995, a follow-up letter dated September 19, 1995, a letter dated May 11, 1993, a letter from Dan Bollman to Senesi dated May 31, 1995, and a drawing of the floor plan for the second floor of 403 Park Place. Appellant's Exhibit No. 3 included correspondence and envelopes pertaining to this appeal. Exhibits 4 and 5 consisted of four

photographs of the exterior of the premises, showing various views of the air conditioner at issue.

In addition, the Appellant, Stephen M. Senesi, offered a statement on his own behalf. In brief, he explained the basis for his appeal and discussed how the air conditioner came to be installed in his building. Among other things, he indicated that when he purchased the building, he intended to convert it into two convenient and attractive rental units. He said he had spent between $15,000 and $18,000 on the building, most of which was devoted to refurbishing the interior of the second floor apartment, which required as much as 60% new dry wall, updated electrical and plumbing systems, a new kitchen, and a new bathroom. He further indicated that he had had several conversations with the Kalamazoo Historic Preservation Coordinator at the time, Dan Bollman, about the building exterior and the grounds of the property, including how high a new corner fence should be, and how to trim a second story porch railing. However, they had little or no discussion about the building's interior and never discussed the air conditioner per se. The Appellant emphasized that in the entire process, he never received anything in writing with respect to his obligations relative to historic preservation.

The Appellant additionally spoke about why and where he had installed the in-wall air conditioner. He indicated that it was located in a good place with respect to wiring for a 220 circuit. He stated that it was also situated to serve virtually the whole apartment, which a window unit could not do, and that it added to

the value and enjoyment of the apartment. He further explained that at the time, he had just purchased wood sash replacement windows costing $200 to $300 apiece, enhancing overall energy efficiency, and he felt that the in-wall air conditioner would be more energy efficient than a smaller window unit.

The Appellant concluded his presentation by pointing out that, if visual impact were the primary consideration, he found it strange that a window unit would be proper, whereas an in-wall air conditioner, with an almost identical appearance, was unacceptable.

The Appellee/Commission also presented written evidence at the hearing, consisting of a single, multi-document exhibit. Commission Exhibit No. 1 consisted of the following items: 1) a letter dated October 28, 1996 from the Chair of the Commission clarifying the Commission's reasons for denying Senesi's request, 2) a copy of the opening remarks made by McKay during the administrative hearing, 3) a time line of events relating to this appeal, 4) key issues raised by Senesi during the course of his renovation project, 5) the Commission's rebuttal to the key issues raised, 6) a copy of Chapter 16 of the Kalamazoo Code of Ordinances, 7) the portion of the Standards and Guidelines for Kalamazoo's Historic Districts addressing mechanical equipment, 8) the portion of the Secretary of the Interior's Standards for Rehabilitation addressing mechanical systems, and 9) the portion of Preservation Brief No. 24 outlining "HVAC Do's and Don'ts".

The Commission also presented testimony from the City of Kalamazoo's Historic Preservation Coordinator, Robbert McKay.

McKay explained that the Commission had denied Senesi's application because the mechanical installation at 403 Park Place was inappropriate under local historic preservation standards and guidelines, the Secretary of the Interior's preservation guidelines relating to mechanical systems, and Preservation Brief No. 24 on Heating, Ventilating and Cooling Historic Buildings.

McKay also testified that he had assumed the position of Kalamazoo Historic Preservation Coordinator in June of 1995. He stated that, in performing his duties, he currently sees to it that "all people (in the District) get buried in paper (concerning their obligations under historic preservation law)", including copies of such documents as Act 169, Ordinance 16, the local historic design guidelines and standards, the Commission's agendas for the year, and the Secretary of the Interior's Standards, if requested.

McKay additionally commented on a letter sent by his predecessor, Dan Bollman, to Senesi on May 31, 1995. In that correspondence, Bollman wrote that moving the in-wall air conditioner to the opposite side of the building might gain the Commission's approval, since that area was out of public view and the Commission had recently pledged to relax its regulations. McKay expressed his belief that the letter was "flawed", in that even though the Commission may have relaxed some aspects of regulatory enforcement, it was highly unlikely that the Commission would ever approve installation of a through-the-wall air conditioner.

Findings of Fact

Based on the evidence presented at the administrative hearing, the facts of this matter are found to be as follows:

A. Installation of Air Conditioner

1. Stephen M. Senesi, who resides at 439 Park Place, Kalamazoo, Michigan, acquired the property situated at 403 Park Place, Kalamazoo, Michigan, on or about January 31, 1991. Senesi was interested in renovating and converting the two-story structure into two attractive and comfortable apartment units. The first floor required little work other than repainting. The interior of the second floor required substantial renovating.

2. About a year or so after acquiring the property, Senesi began his renovation project. At that time, he spoke with a city building inspector who indicated that Senesi would also have to contact Dan Bollman with respect to the historic preservation aspects of his project.

3. Senesi did speak with Bollman on a number of occasions, and they developed a good working relationship relative to the renovations affecting the building's exterior. Among other things, they worked amicably to determine an appropriate top treatment for a new stockade fence Senesi wanted to erect around his corner lot. They also worked well in developing an appropriate design for a new second floor porch railing. However, they had little or no conversation about the interior of the structure, and Senesi proceeded with that aspect of his project under his building permit. Senesi never received any written materials from Bollman.

4. During the course of the second floor renovation, Senesi decided to install a through-the-wall air conditioner. He felt that a large in-wall unit would be preferable to a window unit and would make the apartment more comfortable. He was also reluctant to install a window air conditioner in his new replacement window. Selecting a wall location convenient to 220 wiring, Senesi removed two layers of original wall (inside and outside), and at least one stud plus other historic materials such as siding, framing, and fasteners, in order to install the through-the-wall air conditioner.

B. Initial Requests for Retroactive Approval

5. During the summer of 1992, Kalamazoo historic preservation personnel became aware of the in-wall air conditioner, and on or about August 6, 1992, communicated to Senesi that there might be a problem. Senesi subsequently requested retroactive Commission approval for installation of the unit.

6. The Commission met on September 15, 1992 to consider that request, and during that review considered whether the window nearest to the in-wall unit was too small for a second floor air conditioner. After deliberations, the Commission rejected the request and issued an order requiring removal of the in-wall air conditioner.

7. On September 22, 1992, Senesi received written notice from the Commission indicating that it had disallowed his request for a through-the-wall air conditioning unit. Since he was unable to be

present at the September meeting, he later asked the Commission to reconsider its ruling.

8. On February 17, 1993, Senesi attended a Commission meeting at which the Commission reviewed his "appeal" of the September decision. This meeting resulted in an affirmation of the previous ruling, although there was considerable discussion of the issues that Senesi raised. He received written confirmation of the decision on or about March 17, 1993. At that time, he was informed of his right to appeal the most recent ruling to the Review Board, on before May 17, 1993. However, although Senesi drafted a letter of appeal, the Review Board never received that letter.

C. **Current Application for Retroactive Approval**

9. In May of 1995, attempts were again made to resolve issues associated with the as yet unapproved in-wall air conditioner. On or about May 31, 1995, Bollman wrote to Senesi, indicating that he (Bollman) would like to clear the matter from his files. Among other things, Bollman suggested that Senesi might consider presenting the installation issue to the Commission once more, but with the modification of moving the unit to the opposite side of the building, in an area which was removed from public view. Bollman added that while he could not promise Commission approval for such a proposal, it might save everybody a trip to Lansing.

10. On September 11, 1995, Senesi wrote directly to the Review Board. He indicated that he had not heard anything from his May 11, 1993 request, but felt that he had good grounds for an appeal.

11. On September 19, 1995, the Review Board's Executive Secretary, Kathryn B. Eckert, wrote to Senesi, indicating that she had no record of any 1993 appeal and that any such filing must be submitted within 60 days of commission action. She suggested that he again apply to the Commission.

12. On or about December 27, 1995, Senesi filed another request for retroactive approval of his through-the-wall mechanical air conditioning unit installed at 403 Park Place. The Commission assigned Case No. 96-32 to that request.

13. The Commission initially met on February 20, 1996 to consider the new request. Senesi was present and submitted a memo outlining three reasons why he believed his request should be granted. They were: 1) he never received any written material warning about potential problems, 2) the current in-wall installation was tighter and less drafty than through the window, and 3) the Commission appeared to have changed its policy on through-the-wall installations. At that time, the Commission postponed full consideration of Senesi's request for one month, deferring further review to its March meeting.

14. The Commission next met on March 16, 1996. The Commission noted that no new information had been submitted with the new request, and upon motion, denied Senesi's current application.

15. On April 17, 1996, the Commission issued a written Notice of Denial concerning the application at issue. The notice indicated that Senesi's current request contained no new

conditions/modifications which would show any attempt to correct the installation. The notice further indicated that the current installation significantly altered the exterior appearance of the historic resource. The notice lastly stated that the mechanical unit must be removed and that the affected area must be re-sided to match the surrounding area.

16. Senesi received the Notice of Denial on May 10, 1996.

17. On July 8, 1996, Senesi mailed the appeal at issue to the Review Board. The Board received the appeal on July 10, 1996.

Conclusions of Law

As previously indicated, section 5(2) of the Local Historic Districts Act, supra, allows persons aggrieved by decisions of commissions to appeal to the State Historic Preservation Review Board. Section 5(2) also provides that the Board may affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or a notice to proceed. Relief should, of course, be granted where a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial and material error of law. Conversely, where a commission has reached a correct decision, relief should not be awarded.

A. Compliance with Historic Preservation Standards

At the outset, it must first be recognized that there is no significant issue in this case with respect to whether or not the

installation of a through-the-wall air conditioner violates historic preservation principles and law.

The installation clearly violated two Standards for Rehabilitation of Historic Property promulgated by the U.S. Secretary of the Interior.[3] Those standards are 2 and 9, which provide as follows:

> (2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
>
> (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

As is readily apparent from the hearing record, the unit was installed through an exterior wall of a house located in an historic district, resulting in the removal of siding, fasteners, walls, and other historic materials.

Moreover, the Secretary of the Interior's Historic Preservation Guidelines, in the recommendation section relating to the installation of mechanical systems, state that:

> Recommended -- Installing a completely new mechanical system if required for the new use so that it causes the least alteration possible to the building's floor plan, the exterior elevations, and the least damage to historic building materials.

and

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[3] 36 CFR § 67.7.

> Not Recommended -- Cutting through features such as masonry wall in order to install air conditioning units. (Emphasis added)

In addition, Preservation Brief No. 24, which addresses the heating, ventilating and cooling of historic buildings, indicates under the "Don'ts":

> Don't cut the exterior historic building wall to add through-wall heating and air conditioning units. These are visually disfiguring, they destroy historic fabric, and condensation runoff from such units can further damage historic materials.

Finally, the Standards and Guidelines for Kalamazoo's Historic Districts provide:

> Mechanical Equipment
> Equipment shall be screened from view from the public right-of-way and shall not obscure character defining features.
> Equipment must be installed so as to be reversible in the future.

Under any reasonable application of each of the aforementioned standards to the Appellant's work project, the conclusion must be that the Commission properly rejected the retroactive approval application under historic preservation/renovation principles.

That, then, brings this discussion to a consideration of the Appellant's three grounds for reversal.

B. Basis for Appeal and Grounds for Reversal

1. Failure to Provide Written Materials

In his appeal, the Appellant first argued that because he never received any written materials from the Commission, or its staff, to warn him about any potential problems with inserting an air conditioning unit through an exterior wall, the Commission's decision should be reversed.

Upon due consideration of this argument, it must be concluded that the Appellant's first ground for reversal is without substantial merit. In effect, the Appellant is saying that unless he, and all other citizens similarly situated, receive written copies of applicable laws, they cannot be held accountable to abide by those laws. Such an argument must be rejected on its face. Its acceptance would, in an ultimate sense, require all governmental agencies everywhere to provide every citizen with written copies of every law before any law enforcement could take place. This is simply not the way our legal system functions.

Moreover, it must be observed that the Appellant was, in truth, not without some information about the potential for problems. By his own admission, when he went to the Kalamazoo Building Department, he was promptly informed that because his new building was situated within an historic district, he would have to consider historic preservation issues and address those matters with the Commission and its staff. Indeed, over time, the Appellant engaged in numerous preservation-related conversations with Dan Bollman. Various issues involving the exterior of his building were raised and resolved in those conversations. However, air conditioners were never discussed.

It is also clear that the Appellant had constructive notice of the laws in question. Federal regulations, state statutes, city ordinances, local preservation standards and guidelines, and federal publications, are not secret documents. They are open and available to the public. They are published precisely to make them

available to the public. Anyone can obtain them from a variety of sources, including public libraries, law libraries, and government agencies. In this sense, they were always accessible to the Appellant.

Also, there is nothing in the hearing record to suggest that the Appellant, during the course of his conversations with Bollman, ever asked for any written materials himself, even to address fence heights and top designs or porch rail treatments. Had he inquired about air conditioners, written materials would no doubt have been provided.

Furthermore, the historic preservation system functions on a voluntary application basis. Property owners are to apply to commissions for permission to modify the exteriors of structures, if located within an historic district. The air conditioner installation work in question plainly and obviously affected the exterior of the Appellant's building. The building was located in an historic district. The burden was the Appellant's to bring the issue of his proposed work to the Commission's attention.

Finally, the fact that the current staff member, McKay, now "buries" homeowners in paper, does not change this analysis. Government agencies have limited funding and resources, and have the right to exercise discretion as to how to best expend those resources. The current local coordinator has apparently determined that distributing as much written information as possible to property owners throughout the District, is desirable. His predecessor may have held a different view. But even the current

coordinator cannot and does not distribute copies of everything. Rehabilitation standards and guidelines are still not routinely provided, except upon request. Few if any home owners would ever have use for them.

Lastly, whether written materials were distributed or not, "ignorance of the law is no excuse."

It is therefore concluded that the Appellant's first argument must be rejected.

2. **In-Wall Air Conditioners Are Better**

The Appellant next requests reversal on the basis that a through-the-wall air conditioner is inherently "tighter" and "less drafty" than a window unit, which in this instance would also be smaller and inadequate for purposes of occupant comfort.

As noted above, applicants and appellants bear the burden of proof in a proceeding such as this.

Based on the evidence in the hearing record, it is deemed that the Appellant's contention that only the in-wall air conditioner in question would do an adequate job for occupants, is without adequate support.

In the first place, the Appellant's evidence on this point is anecdotal and conclusory, rather than scientific and persuasive. Indeed, there is no evidence in the hearing record, other than the Appellant's assertions, to clearly demonstrate that a unit of the size in question was necessary for the comfort of occupants, or that a smaller window unit would either be inadequate for cooling purposes, or drafty and inefficient.

Further, even if the Appellant had proven that window air conditioners are "draftier" than in-wall models, that differential in and of itself would not necessitate a reversal of the Commission's decision. Compliance with historic preservation regulations of necessity entails some burden on homeowners. All regulatory laws do as much. The question becomes whether such burdens are reasonable or unreasonable. In the matter at hand, the burden, if any (and again, there appears to be none), would not be so onerous as to require reversal of the Commission's decision.

Thus, Appellant's second averment must be rejected.

3. **Changing Policy Requires Reversal**

In his final argument, the Appellant indicated that in a letter dated May 31, 1995, Dan Bollman suggested that the Commission might look favorably on some type of through-the-wall installation. The Appellant argued that, if so, then there had been a policy change and the air conditioner at issue should have received retroactive approval.

By way of a response, the Commission's representative testified that Bollman's letter was "flawed" -- that there had been no change in practice or policy, and that the Commission would not approve any in-wall air conditioner.

The evidence presented in this matter supports the coordinator's statements. Based on the hearing record, it appears that no through-the-wall air conditioner has ever been approved in Kalamazoo, and that in at least one instance, the denial of an application for an in-wall unit was rejected with a degree of

notoriety. Moreover, Standards 2 and 9 of the Interior Secretary's rehabilitation regulations, as well as other laws and guidelines, give persuasive support for the proposition that in-wall air conditioner installation are strongly discouraged and may even be impermissible per se.

As for the visual aspects of in-wall versus in-window, the Appellant, of course, has posited that visually, both installations are identical. However, such is not always the case. Through-wall units often extend far out over a building. In fact, the unit in question does so, by virtue of two large supporting brackets, neither of which would likely be needed for a seasonal window unit. Further, as for the matter of "reversibility", window unit installations are temporary and/or seasonal, by definition. Clearly, they are readily reversible, at least in contrast with an in-wall unit, which involves permanent hard wiring and cutting through an exterior wall for installation purposes.

Inasmuch as the Commission has not changed its policy and has consistently rejected proposed installations of in-wall air conditioners, and in that the visual and reversibility aspects of the two types of installations have significant differences, the Appellant's third and final basis for Commission reversal must also be rejected.

Conclusion

In consideration of the entire hearing record made in this case, it is concluded that the Appellant has failed to demonstrate that the Commission should have provided him with written material

alerting him to the potential for problems with the installation of a through-the-wall air conditioner. It is also concluded that the Appellant failed to prove that an in-wall unit is inherently or significantly superior to a window unit, so as to require approval. It is further concluded that the Appellant failed to show that the Commission changed its policy on in-wall air conditioner denials, or that window and in-wall units must be treated identically.

Recommendation

In consideration of the above, it is recommended that the appeal be denied.

Dated: January 17, 1997

Nicholas L. Bozen (P11091)
Presiding Officer
Hearings Division

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